GOVERNMENT OF INDIA
COMMUNICATIONS AND INFORMATION TECHNOLOGY
LOK SABHA

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Sharing and Trading of Spectrum
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Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

(a) whether the Government has finalised the guidelines for sharing and trading of spectrum by service providers recently;

(b) if so, the details and salient features thereof along with the likely benefit of the initiative;

(c) whether the leasing of spectrum is allowed under the guidelines and whether the terms and conditions attached to the allocated spectrum remain the same even after the transfer;

(d) if so, the details thereof; and

(e) whether the Government is considering coming out with a spectrum liberalisation policy soon and if so, the details thereof?

Answer

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY
(SHRI RAVI SHANKAR PRASAD)

(a) Yes Madam.

(b) The details and salient features of spectrum sharing and spectrum trading are attached at Annexure I.

(c) No Madam.

(d) Does not arise in view of (c) above.

(e) The guidelines for liberalisation of administratively allotted spectrum in 800 MHz and 1800 MHz frequency bands have been issued. The details are attached at Annexure II.

Annexure I
Spectrum Sharing
Spectrum sharing allows operators to pool their respective spectrum for usage in a specific geographical area and thus complementing each other's needs and ensuring more efficient utilisation of the spectrum. Moreover, the pooling of the spectrum increases the spectrum efficiency for both the operators as the capacity to carry telecom traffic is not in linear proportion to sum of their spectrum holding but is much larger than the sum of the traffic capacities of individual service provider.

The salient features of the spectrum sharing include:-
(a) Spectrum sharing shall be allowed only for the access service providers holding Cellular Mobile Telephone Service (CMTS) /Unified Access Service License (UASL) /Unified License (Access Services)(UL(AS))/Unified License (UL) with authorisation of Access Service in a Licensed Service Area (LSA), where both the licensees are having spectrum in the same band.
(b) Sharing is permitted in the following scenarios:
(i) For the spectrum where both the licensees possess the spectrum for which market price has been paid with the clarification in respect of spectrum in 800 MHz acquired in the auction held in March 2013, sharing of spectrum shall be permitted only if the differential of the latest auction price and the March 2013 auction price on pro-rata basis on the balance period of right to use the spectrum is paid.
(ii) In case both the Licensees who plan to share spectrum are having the administratively allotted spectrum in that band, the sharing of spectrum is permitted only when both the licensees have paid One time Spectrum Charges (OTSC) for their respective spectrum holdings, above 4.4 MHz (GSM) / 2.5 MHz (CDMA) based on reserve price/auction determined price. However if the said amount is not paid due to judicial intervention in judicial forums barring any coercive action, in the interim, sharing of spectrum in such cases will also be permitted subject to submission of a bank guarantee for an amount equal to the demand raised by the department for one time spectrum charge pending final outcome of the court case.

(iii) where one licensee has spectrum acquired through auction/trading or liberalised spectrum and the other has spectrum allotted administratively, sharing is permitted only after the spectrum charges for liberalising the administratively allocated spectrum are paid. Further, in case of spectrum acquired in auction held in March 2013, differential amount as indicated in para (b)(i) above shall be payable in respect of 800 MHz band.

(c) Spectrum Usage Charges (SUC) rate of each of the licensees post-sharing shall increase by 0.5% of Adjusted Gross Revenue (AGR).

(d) Spectrum sharing shall be available for upto the balance period of the licence or upto the period of right to use spectrum, whichever is earlier.

(e) The prescribed limits for spectrum cap shall be applicable for both the licensees individually. Further, the spectrum holding of any licensee post-sharing shall be counted after adding 50% of the spectrum held by the other licensee in the band being shared being added as the additional spectrum to the original spectrum held by the licensee in the band.

(f) A prior intimation by both the licensees shall be given jointly for sharing the right to use the spectrum at least 45 days before the proposed effective date of sharing. Both the licensees shall also give an undertaking that they are in compliance with all the terms and conditions of guidelines for spectrum sharing and the licence conditions and will agree that in the event, it is established at any stage in future that either of the licensee was not in conformance with the terms and conditions of the guidelines for spectrum sharing or/and of the licence at the time of giving intimation for sharing of right to use the spectrum, the Government will have the right to take appropriate action which inter-alia may include annulment of sharing arrangement.

Spectrum Trading

Spectrum trading allows parties to transfer their rights to use the spectrum and obligations to another party. This allows better spectrum usages as the idle spectrum from the hands of one service provider gets transferred to the other service provider who is facing spectrum crunch. This also improves customer satisfaction and services of the service provider acquiring spectrum.
The salient features of spectrum trading are as below:

(a) Spectrum trading shall be allowed only between two access service providers, holding Cellular Mobile Telephone Service (CMTS) License, Unified Access Service License (UASL), Unified License (Access Services)(UL(AS)) and Unified License (UL) with authorisation of Access Service in a licensed service area.

(b) Only outright transfer of right to use the spectrum from the seller to the buyer shall be permitted. Leasing of spectrum is not permitted.

(c) Spectrum trading will not alter the original validity period of spectrum assignment as applicable to the traded block of spectrum.

(d) The seller shall clear all its dues prior to concluding any agreement for spectrum trading. Thereafter, any dues recoverable up to the effective date of trade shall be the liability of the buyer. The Government shall, at its discretion, be entitled to recover the amount, if any, found recoverable subsequent to the effective date of the trade, which was not known to the parties at the time of the effective date of trade, from the buyer or seller, jointly or severally. The demands, if any, relating to licenses of seller, stayed by the Court of Law, shall be subject to outcome of decision of such litigation.

(e) Only the spectrum in the 800/900/1800/2100/2300/2500 MHz bands is permissible to be traded which has either been assigned through an auction in the year 2010 or afterwards, or on which the Telecom Service Provider (TSP) has already paid the prescribed market price. In respect of spectrum in 800 MHz band acquired in the auction held in March 2013, trading of spectrum shall be permitted only if the differential of the latest auction price and the March 2013 auction price on pro-rata basis on the balance period of right to use the spectrum is paid.

(f) Buyer will be allowed to use the spectrum acquired through trading to deploy any technology by combining it with their existing spectrum holding in the same band after converting their entire existing spectrum holding into liberalised spectrum in that band as per the prevalent terms and conditions.
(g) The buyer should be in compliance of the prescribed spectrum caps declared from time to time. The spectrum acquired through trading shall be counted towards the spectrum cap by adding to the spectrum holding of the buyer.
(h) The seller should clear its Spectrum Usage Charges (SUC) and its instalment of payment (in case seller had acquired the spectrum through auction and opted for deferred payment) till the effective date of trade and thereafter, the buyer shall clear all these dues.
(i) A non-refundable transfer fee of one percent (1%) of the transaction amount of aforesaid trade or one percent (1%) of the prescribed market price, whichever is higher shall be imposed on all spectrum trade transactions, to cover the administrative charges incurred by Government in servicing the trade. The transfer fee shall be paid by the buyer to the Government. Transaction amount refers to the amount payable by the buyer to the seller to purchase the rights to use the spectrum block(s). It will be decided exclusively by the buyer and the seller. The market prices shall be equal to the auction determined amount prorated for the balance validity period of spectrum assignment. In case more than one set of market determined prices are available, the latest market determined price available at the time when the TSP wants to trade its spectrum holding, would be applicable. If the auction determined prices are more than one year old, the prevailing market price shall be applied by indexing the last auction price at the rate of SBI PLR.

(j) The amount received from trading shall be part of Adjusted Gross Revenue (AGR) for the purpose of levy of License fee and Spectrum Usage Charges (SUC).

(k) Both the licensees trading the spectrum shall jointly give a prior intimation for trading the right to use the spectrum at least 45 days before the proposed effective date of the trading. Both the licensees shall also give an undertaking that they are in compliance with all the terms and conditions of guidelines for spectrum trading and the licence conditions. In the event, it is established that any of the licensee was not in conformance with the terms and conditions of the guidelines for spectrum trading as well as the licence at the time of giving intimation for trading of right to use the spectrum, the Government will have right to take appropriate action which inter-alia

may include annulment of trading agreement.

(l) Existing rates as prescribed by the Government from time to time for Spectrum Usage Charge (SUC) shall continue to apply on spectrum held by the buyer and seller. The spectrum held by buyer shall include the spectrum acquired through trading. Spectrum acquired through spectrum trading shall be treated akin to spectrum acquired through auction.

Annexure-II
The details of liberalisation of administratively allotted spectrum
in 800 MHz and 1800 MHz frequency bands

(a) Existing Cellular Mobile Telephone Service (CMTS), License, Unified Access Service (UAS) License, and Unified License (UL) with access service authorisation licensees may liberalise their entire administratively allotted spectrum holding in 800 MHz and 1800 MHz band in a Service Area for the balance validity period of right to use spectrum.
(b) Administratively allotted spectrum in 800 MHz and 1800 MHz bands refers to the spectrum allotted prior to auction of right to use spectrum in November, 2012.
(c) After the in-principle approval of the competent authority that the liberalisation of administratively allotted spectrum of the Telecom Service provider (TSP) is permitted subject to receipt of necessary payment in this regard, a demand note to the concerned TSP indicating the total amount payable and due date of payment and terms of payment will be issued by the Department.
(d) The spectrum will be required to be liberalised for the balance validity period of right to use the same after payment of auction determined price prorated for the balance validity period.
(e) The entry fee paid will be pro-rated for the balance validity period of right to use spectrum and will be deducted from the total amount to be paid by the TSP for liberalising the spectrum.
(f) In case more than one set of auction determined prices are available, the latest auction determined prices for the respective frequency band as available at the time of calculation of charges/amount payable for liberalisation of spectrum, would be applied.
(g) If the auction determined price is more than one year old then the prevailing market rates would be determined by indexing the last auction price at the rate of SBI PLR.
(h) In case the spectrum gets liberalised, the One time Spectrum Charge (OTSC) will be charged up to the date for calculation of charges for liberalising the spectrum and the same has to be paid by the licensee. However, if such demand is pending due to judicial intervention barring any coercive action, a bank guarantee equal to this amount shall be submitted pending final outcome of judicial process.
(i) After getting the spectrum liberalised, the TSPs may combine the same with the spectrum acquired by them in the same band through auctions/trading.
(j) Spectrum Usage Charges (SUC) will be required to be paid for the liberalised spectrum as prescribed by the Government from time to time.
(k) The above guidelines shall not be applicable for liberalisation of a frequency band in a service area where auction determined price is not available for that band.